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a flexible cover overlying said open area for closing the side structure, the cover operable to collapse with the side structure in the collapsed position while remaining over a portion of said open area for preventing undesired contaminants from entering the container when it is collapsed.

whereby a person may more efficiently and safely remove product from the container and the container and dunnage is readily reused.

**REMARKS**

Claims 1-18 are pending and rejected under Section 102(b) over the reference of U.S. Patent No. 4,946,036. Claims 1-18 are also rejected under obviousness-type double patenting over U.S. Patent No. 5,725,119 as modified by the '036 patent. New claims 19-20 are added.

**Section 102(b) Rejections**

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Claims 1-18, which include independent claim 1, are rejected under 35 U.S.C. §102(b) as being anticipated by Kupersmit, U.S. Patent No. 4,946,036. It is well established that a rejection under §102(b) clearly requires that all of the limitations set forth in the claim are taught by the reference. Indeed, the Examiner argues that Kupersmit shows all the structures of the device as recited by the claims. Applicant has amended claim 1 to further define the invention and to more clearly point out that the Kupersmit

reference fails to teach each and every one of the limitations recited in the claims. Therefore, the Kupersmit reference can not legally anticipate the claims under §102(b).

Specifically, claim 1, and therefore the following dependent claims, recite a dunnage structure spanning between the side structures wherein the dunnage structure is operably coupled to the side structures for automatically moving with the side structures to an erected position and to a collapsed position when the side structures are erected and collapsed, respectively. That is, when the side structures are moved to collapse the container and to reduce its size, the dunnage structure automatically moves to the collapsed position in the body of the container. This occurs simply by moving the side structures, without an additional disassembly step. The Kupersmit reference clearly does not show such structure or operation.

Specifically, assuming that the strap members or cradle elements 67 act as the dunnage, it is clearly shown in Kupersmit that such straps are held by one or more separate and individual load-supporting elements 14 which must be specifically assembled in the overall assembly of the container. As illustrated in Figure 2 of the Kupersmit patent, channel engaging members 64 of the bar 62 fit into channels 61 of a channel-forming member 60. The bars 62 are rigid and span between sides of the container. They do not collapse. They do not automatically move with the side structures between an erected position and a collapsed position. Rather, as illustrated in Figure 2, and set forth in column 5, lines 15-21, for reshipment of the container, the bar 62 must be separately removed and

positioned on the bottom, or lower, wall 30 of the container so that the box element may be collapsed.

Therefore, the Kupersmit reference clearly does not teach the benefits of the present invention which provide for rapid assembly and positioning of the dunnage structures merely upon erecting or collapsing the side walls of the container. No separate steps are required in the invention for lifting rigid bars and then securing those rigid bars at their ends within channel structures. As illustrated in Figure 2 of Kupersmit, the whole entire assembly must be removed piece by piece in order for the box to collapse, even though various of the pieces might be stored in the box.

Therefore, because Kupersmit does not teach a dunnage structure which is operably coupled to the side structures for automatically moving with the side structures between an erected position and a collapsed position, the Kupersmit reference clearly cannot anticipate the invention of claims 1-18 under §102(b). Furthermore, there is absolutely no teaching in Kupersmit with respect to somehow modifying the box and its rigid bars to produce the invention.

Therefore, independent claim 1 is allowable over the cited art and is not anticipated by Kupersmit. Furthermore, the dependent claims 2-18 are also allowable over the cited art and recite unique combinations of elements which are not taught by that art.

**New Claims**

Claims 19 and 20 are new claims which recited unique combinations of elements not taught by Kupersmit or other cited references. Claim 19 recites a container body having at least two opposing and moveable side structures wherein at least one of the side structures comprises an open frame with a section hingedly coupled with respect to the body to be selectively hinged between the collapsed and erected positions.

With respect to Figures 2A and 2B, the frame may be seen, and the open frame provides the open area which is in alignment with the open end of the dunnage structure. The Kupersmit reference clearly does not teach such an open frame with the section hingedly coupled with respect to the body to be selectively hinged between the collapsed and erected positions. The corrugated paper walls 33 and 34 have horizontal fold lines. However, those corrugated walls in no way define an open frame with a section hingedly coupled with respect to the body, nor do they define an open area of the erected box.

Accordingly, claim 19 is allowable over Kupersmit and the other cited art.

Claim 20 is a new claim which recites a reusable and returnable container which includes a flexible cover overlying the open area defined by a side structure, in order to close the side structure. The cover is recited as operable to collapse with the side structure in a collapsed position, while remaining over a portion of the open area. That is, the flexible cover is operable to collapse along with the side structure, while still remaining to cover a portion of the open area of the collapsed container for preventing undesired contaminants from entering the collapsed container. As illustrated in Figures 2A and 2B,

the flexible cover forms part of a closed side of the container when it is erected, and also forms a closed side of the container when it is collapsed. The Kupersmit reference clearly does not show such a feature. In fact, the box is shown as open in Figures 4 and 5, and is closed with a generally solid door 41, as illustrated in Figure 3. However, when the box is collapsed, as illustrated in Figure 1 of the Kupersmit patent, all the sides, including door 41 are not utilized. Therefore, Kupersmit fails to teach a flexible cover overlying the open area for closing the side structure wherein the flexible cover remains over a portion of the open area in the collapsed position to prevent contaminants from entering the container.

Accordingly, claim 20 is also allowable over Kupersmit and the cited references.

#### **Double Patenting Rejection**

Claims 1-18 are rejected under the judicially created doctrine of obviousness-type double patenting, being unpatentable over U.S. Patent No. 5,725,119, in view of Kupersmit. The Kupersmit reference, which is a collapsible box, merely teaches a box wherein one of the sides may be removed so that it has open sides. A box with a removable side does not in any way teach a person of ordinary skill in the art to somehow modify the Bradford et al. reference to yield the present invention. Nor does the Kupersmit reference teach a dunnage structure which has an open end facing a side structure which defines an open area in alignment with the dunnage structure open end. The Kupersmit patent utilizes straps and the loops to the straps are lined up or open facing the side walls,

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and not the open side of the box. Accordingly, the combination of Kupersmit and Bradford et al. does not render obvious the claimed invention.

Should the claims be otherwise allowable, the Applicants would certainly consider the utilization of a Terminal Disclaimer for overcoming the obviousness-type double patenting. If so, the Examiner would be encouraged to telephone the undersigned to discuss the filing of such Terminal Disclaimer.

Accordingly, the Applicants submit that all of the claims currently pending are allowable, and requests an indication of their allowance at the Examiner's earliest convenience. If any issues remain in the case, a telephone interview with the undersigned would certainly be encouraged so that prosecution might be expedited.

A check in the amount of \$55.00 has been enclosed for the extension of time. However, if any further charges or credits are necessary, please apply them to Deposit Account 23-3000.

Respectfully submitted,



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